

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
INCIPIENT, INC.)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
INTERNATIONAL BUSINESS MACHINES)	
CORPORATION,)	
)	
Defendant.)	
_____)	

NOTICE OF REMOVAL

Defendant International Business Machines Corporation ("IBM"), by and through its undersigned attorneys, hereby gives notice of removal of this action from the Trial Court of Massachusetts, Superior Court Department, Suffolk County, to the United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

BACKGROUND

1. On March 13, 2008, plaintiff Incipient, Inc. ("Incipient") filed a Complaint in the Trial Court of Massachusetts, Superior Court Department, Suffolk County, captioned *Incipient, Inc. v. International Business Machines Corp.*, No. 08-1203. The Complaint attaches and asserts claims under a contract that includes a Licensed Works Agreement ("LWA") and a Statement of Work ("SOW") (together, the "Contract").

GROUND FOR REMOVAL AND STATUTORY REQUIREMENTS

2. Plaintiff's civil action is removable under 28 U.S.C. §§ 1332 and 1441, based on the complete diversity of citizenship among the parties. As alleged in the Incipient Complaint, Incipient is a Delaware corporation with its principal place of business in

Massachusetts, and IBM is a New York corporation with its principal place of business in New York.

3. This Notice of Removal is properly filed in the United States District Court for the District of Massachusetts because the Trial Court of Massachusetts, Superior Court Department, Suffolk County is located in this federal judicial district. 28 U.S.C. § 1441(a).

4. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. 28 U.S.C. § 1446(a).

5. IBM consented to service of the Civil Action Cover Sheet for the Business Litigation Session and the Complaint on March 21, 2008. Accordingly, this Notice of Removal was timely filed less than 30 days after the earliest possible date for the running of the 30-day period under 28 U.S.C. § 1446(b).

6. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Defendant in this action, which papers include the Civil Action Cover Sheet for the Business Litigation Session, the Complaint, and the Appointment of Special Process Server, and Acceptance of Service, are attached. (*See* Exs. A, B, C, and D.)

7. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on counsel for Plaintiffs and is being filed, along with a Notice of Filing, with the Clerk of the Trial Court of Massachusetts, Superior Court Department, Suffolk County.

CONCLUSION

For the foregoing reasons, Defendant IBM respectfully requests that this Court exercise jurisdiction over this removed action and enter orders and grant relief as may be necessary to secure removal and to prevent further proceedings in this matter in the Trial Court of Massachusetts, Superior Court Department, Suffolk County.

Dated: April 10, 2008

Respectfully submitted,
International Business Machines Corporation
By its attorneys,

/s/ Jennifer M. Ryan
Thomas E. Dwyer (BBO# 139660)
Jennifer M. Ryan (BBO#661498)
DWYER & COLLORA, LLP
600 Atlantic Avenue
Boston, MA 02210
Tel: (617) 371-1000
Fax: (617) 371-1037
tdwyer@dwyercollora.com
jryan@dwyercollora.com

Of Counsel

Steven J. Routh, Esq. (SJR 1237)
HOGAN & HARTSON, L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004-1109
Telephone: (202) 637-5600
Facsimile: (202) 637-5910

William F. Haigney, Esq.
HOGAN & HARTSON, L.L.P.
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-3000
Facsimile: (212) 918-3100

CERTIFICATE OF SERVICE

I, Jennifer R. Ryan, hereby certify that a true copy of the foregoing document filed through the ECF system will be electronically sent to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants on April 10, 2008.

/s/ Jennifer M. Ryan

Jennifer M. Ryan